

Why the Criminal Justice System Can't CONTROL CRIME

by Gerald S. Reamey,
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The nation is abuzz with proposed remedies for curbing crime. But criminal law professor-author Gerald Reamey doubts their success without radical changes in American values.

Crime in our country is so pervasive and so seemingly unalterable that our youngest generation may literally be unable to remember a time when violent crime was not a characteristic of American life.

In an effort to regain control of our city streets, schools and neighborhoods, the public and those in positions of political power understandably demand to know why our criminal justice system is unable to curb the rising crime rate. Reasons advanced include inadequate police resources, too few prisons, insufficiently harsh punishments and tricky lawyers subverting the system to benefit their unworthy clients.

Which Direction?

Yet we are spending more money on enforcement and corrections; laws are being reconsidered and updated; police are better trained. But still crime persists unabated. Are we moving in the right direction by increasing our expectations and resources allotted to criminal justice? Or are we instead diverting attention from more productive measures and more fundamental issues?

No one who practices, teaches, or studies criminal law and procedure seriously contends that law as it exists is as effective as it should be. On the other hand, the system is probably much better than the casual observer appreciates. True, injustices occur, but thousands of cases do reach approximately the right result for every case that is clearly wrong. We can do better, but there is not much evidence to support that tinkering with the laws or changing the processes will dramatically improve the effectiveness of the legal system in deterring crime.

More Government Control?

At least two very important limitations prevent our justice system from doing much better. First, we Americans have a very low tolerance for governmental interference. Secondly, behavior modification is much more difficult than is usually believed.

Regarding what we will tolerate, consider some simple examples. Suppose we could effectively wage a "war" on drugs by permitting police to enter private homes at will to search for contraband. Would this aid law enforcement? Most assuredly. Then why does our Constitution require probable cause and warrants? The answer: Because we will not accept police forcing their way into our homes without good reason, even if it improves the detection of crime.

Should we require all citizens to carry official identification cards to be shown on demand as some countries do? In a country in which seat-belt and motorcycle-helmet laws are viewed by many as oppressive governmental interference, I doubt that such restrictions would survive (or be observed if passed).

More Police?

If we fear loosening controls on the police, could we not do better by at least increasing their number? More crime would surely be detected and deterred by increased surveillance and patrol, but at what cost? After all, there seems to be plenty of police officers around when we run a stop sign or drive too fast. We believe there are just too few when we want someone else questioned, investigated or arrested.

Assuming we are willing to pay for increased policing, America would be a much less enjoyable place to live if we could not walk around the neighborhood without being under the watchful eye of an armed officer on every street corner. Remember that fascist Mussolini made Italian trains run on time, but simultaneously demonstrated to the world that society is sometimes better off with unreliable trains.

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Probably the most persistent source of frustration about crime is the assumption that people can be made to quit doing bad things by punishment or threatened punishment. This notion works so erratically in practice that it inevitably leads to disappointment.

Turn Up the Voltage?

The criminal justice system is often naively believed to work like shock aversion therapy. That is, if one receives a nasty punishment for every anti-social act, one will quit such acts. Many carry the analogy further by assuming that lack of success in this technique can be remedied by "turning up the voltage." These critics (many of whom seem to be legislators), believe stiffer fines and prison sentences will succeed where lesser punishments fail. The analogy is simply wrong. No criminal justice system that our citizenry would tolerate could apply aversion therapy on a large scale. To do so, and consequently improve the deterrent effect of criminal laws, would require that prohibitions be universally known and punishment be both swift and sure. Those who incorrectly believe that deterrence invariably follows this theoretical, super-efficient system, should consider the behavior of a typical child.



Does Punishment Deter?

Every parent has said to little Susie or Johnny, "If you do that again, I will punish you." And Susie knows from past experience, as well as from the tone of the ultimatum, that she will surely and swiftly be dealt with if she repeats her behavior. Is she deterred? Sometimes, but does the parent exist who has not watched in disbelief and dismay as defiant Susie, against all odds and with doom impending, repeats the behavior? Though these same parents themselves

occasionally refuse to respond to strong compulsion, they cannot fathom why a possible jail sentence does not completely deter crime. We need look no further than death row to understand that the possibility of even the ultimate punishment just does not keep everyone from committing violent crimes.

It goes without saying that if Susie and her parents are not always deterred by swift, sure

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punishment, they are even less likely to be deterred by relatively uncertain punishment that may eventually follow an uncertain criminal conviction. For some, this ends the analysis. They argue that we should speed things up, do away with lengthy appeals, cut down on the possibility of escaping punishment. These measures would undoubtedly improve the deterrent effect of criminal law, but would also undoubtedly result in the conviction and unjust punishment of more innocent

people. Our very high conviction rates nationwide suggest that we may already be engaging in an alarming "presumption of guilt" in criminal cases.

Of course, Susie will be deterred, if at all, only if she knows the law. I find relatively few attorneys who are familiar with the criminal laws of their state, and I can remember almost none of my clients who had much idea of what the law had to say about their conduct. Fiddling with punishments or legal language in a criminal statute may provide lawmakers with an interesting hobby, but such changes are not the popular reading of persons engaged in crime, and they cannot be expected to change their behavior on the basis of what they do not know exists.

We are generally aware that it is against the law to kill or steal, even if we are not sure about the possible punishment. Many are deterred from committing crimes because of morality or shared values, rather than because of the law. Obviously some, like Susie, will not be deterred by law. Certain crimes, those done in the heat of passion for example, are not susceptible to controls that depend on a reasoned response. Other crimes are not deterred simply because people believe that they will not be caught.

Taking Risks

It is impossible to judge the effect of what I call the "invulnerability factor," but in my experience, many crimes are committed because the risk of a bad thing happening

(getting shot, arrested, sent to jail, etc.) is outweighed by the hope of an immediate benefit (obtaining drugs or property, earning esteem from peers, etc.). We see such risktaking every day with people who, for example, engage in dangerous jobs, smoke cigarettes or refuse to wear seat belts. Intelligent, rational people, like little Susie, choose to ignore the risk of almost unavoidable bad things that will happen to them if they continue to behave in a certain way.

Despite the human capacity for doing wrong when it would be easier and safer to do right, many countries have crime rates so much lower than ours that we are tempted to think they have found the answers. Perhaps their systems do work more efficiently in some ways, but their efficiency might be completely incompatible with our sense of personal and social freedom. We do well not to try to transplant selected aspects of other systems without proper consideration of them in an American context.

Our European neighbors, for example, have very low incidences of violent crime. Yet their laws and procedures are not so terribly different from ours. Consider just one possible explanation for their success. Many Europeans are raised in smaller, less diverse communities that have shared values. Often they are raised in the same religious faith and are less mobile than Americans. Such people's anti-social conduct results in punishment worse than any

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find the patriarchal system of power and submission as dehumanizing as do its overt victims. Just as women can hold patriarchal views, men can be feminist.

Why is feminism as a values transformation important? Many feminists believe that the sexual relation between men and women is the primary social relation. As such, it serves as a model for all relations in economic, social, political, military and religious affairs. If inequality dominates this primal relationship, it will be normative in all others.

Sexism may be the original and basic model of human oppression and violence. Until sexism is replaced by the equality of men and women, the elimination of such devastating evils as racism, classism, ageism, and the exploitation of nature remains impossible to achieve.

A patriarchal world view has brought humanity to the brink of nuclear annihilation and degradation of the environment. The rise of a feminist consciousness, the development of feminist perspective and the utilization of feminist values in today's society are the most hopeful realities of our time. If there is to be a future for humanity, it will be feminist. □

U.S. bishops say women are slighted

Compiled from staff and wire reports

A proposed U.S. Catholic bishops' declaration says men have been slighted by sexist patterns and inequitable roles in "leadership, ministry, and policy making."

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Justice

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that the criminal justice system can mete out. They face disapproval by peers. Many Americans do not stay in one community for long, but people in other cultures feel they can suffer no greater harm than ostracism or loss of face within their small society. They lack the freedom that anonymity brings, while anonymity is easily achieved in America.

We can and should continue to fine tune our criminal laws, enforcement, prosecution and procedures. But we must also resist the temptation to drastically change any component of the criminal justice system because of frustration with its seeming inability to curb crime. We must be realistic about the prospects of the legal system ever providing a cure for criminal behavior, for that is only a part of the solution.

The Value of Values

I firmly believe that teaching values such as respect for property, autonomy and security of others can have a far more significant and lasting impact on the incidence of crime. For such an approach to be effective, it must be taught to virtually every child across the nation. I do not think it is utopian to hope that Americans, like many of our world neighbors, can instill core values in society without losing the freedom that is the essence of America. We will certainly disagree about some of these values. That is also part of being American. But I believe the teaching of values can greatly advance our ability to function as a society.

Disapproval of criminal conduct must come from all of us, not just from an institution we create for the purpose of dispensing it. If we ignore laws we do not like, or cheer when Rambo uses illegal violence to accomplish what seems to be a good result, we cannot expect our children to comply with the law. We must not be afraid to publicly reject those anti-social acts that are clearly incompatible with a reasonably secure people. But we must also be careful not to impress our own vision of right and wrong on others, especially where reasonable minds can disagree about that vision.

Being bold about our own values while not invading the right of others to disagree is very difficult. It is the burden of being American. Nevertheless, if we are to succeed in controlling crime without destroying what is best in America, we must have the maturity and commitment to reject the lure of the quick fix. □

Gerald Reamey has been a member of St. Mary's law faculty since 1982, teaching criminal law and criminal procedure. He is the author of "Criminal Offenses and Defenses in Texas" and "A Peace Officer's Guide to Texas Law." His community work includes serving as a consultant to the Texas Municipal Courts Training Center and for various law enforcement agencies in Texas, and on the Bexar County Sheriff's Academy Advisory Board.

